In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 17

JESSE M. CALHOON, ETC., PETITIONER

v.

RAYMOND H. HARVEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed pursuant to the Court's order granting certiorari and inviting the Solicitor General to file a brief expressing the views of the United States (R. 132; 375 U.S. 991).

The by-laws of District No. 1 of the National Marine Engineers' Beneficial Association (the "Association") provide that "Any member may submit his name for nomination" for District office (R. 37, pp. 18–20). The constitution in turn prescribes that to be qualified as a candidate a nominee must meet stated eligibility requirements. In addition to being a member in good standing, he (a) must have been a member of the Association for five years, (b) must have been a member of the particular district for two years, and (c) must have had at least 180 days of

743-754—64——1

employment on vessels covered by an Association contract within two of the three preceding years or equal service as a full-time paid official, elected or appointed, of the Association or a subordinate or affiliated local unit (R. 70). In addition, a candidate for the office of District President must have previously served as a full-time paid elected official of a subordinate or affiliated unit (R. 70).[1]

Respondents, members of District No. 1, nominated themselves for District office but were held not qualified by the District Credentials Committee for failure to meet the eligibility requirements (R. 8, 27). Respondents then brought this action to enjoin future District elections contending *inter alia* that the eligibility requirements and the provision for self-nomination "infringe the right of members of defendant District No. 1, NMEBA, to nominate candidates * * * guaranteed * * * by Section 101(a)(1)" of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411(a)(1) (R. 5–6, 8).

The court of appeals held that "combined effect of the eligibility requirements and the restriction to self-nomination" constituted a violation of Section 101 (a)(1) and that respondents were entitled to a temporary injunction against the holding of the election

[1] The Association's constitution was amended in April 1964 to reduce the requirement of prior membership from five to three years; to delete the requirement that a candidate for District President must have previously held a paid office in the union; and to state that "it has been and shall continue to be the meaning of any applicable provision and the practice thereunder that any member has the right to nominate himself or any other member * * *."

under the present constitution and by-laws (R. 123, 125). In our judgment the decision of the court of appeals misconstrued the guarantee of "equal rights" afforded by Section 101(a)(1). Accordingly, we join petitioner in urging the Court to reverse the judgment below.

Titles I and IV of the Labor-Management Reporting and Disclosure Act are aimed at guaranteeing union democracy. Title IV is devoted to elections. It requires every local labor organization to elect its officials not less than once every three years by secret ballot among members in good standing (Section 401 (b), 29 U.S.C. 481(b)). It further provides that in any such election "a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed) * * *" (Section 401(e), 29 U.S.C. 481(e)). A union member may seek enforcement of the rights conferred by these provisions pursuant to Section 402 of Title IV, 29 U.S.C. 482, by filing a complaint with the Secretary of Labor, who is given exclusive jurisdiction to institute proceedings in the federal district courts to challenge an election already conducted (Sections 402, 403, 29 U.S.C. 482, 483).

Title I is the so-called "Bill of Rights" title. It was added on the Senate floor to prevent "the denial

of the basic human rights on which our very freedom was founded."[1] Section 101, as its title states, is a guarantee of "equal rights." It provides that

> Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates * * * subject to reasonable rules and regulations in such organization's constitution and bylaws.

Section 102 of Title I, 29 U.S.C. 412, authorizes union members to commence suit in a federal district court to enjoin any infringement of the rights guaranteed by section 101.

1. At issue in this proceeding is the validity of two separate restrictions upon the election process imposed by the union's constitution and by-laws: (1) the restriction that no member may nominate for office anyone other than himself; and (2) the restriction that no one may be an officer—nor, hence, a nominee for office—who does not satisfy the stated qualifications. The decision below was purportedly based, not on either of those restrictions standing alone, but upon their "combined effect." We submit, to the contrary, that the validity of each restriction presents an entirely separate question and that their "combined effect" adds nothing to the case and supplies no added ground for challenging them. It is evident, moreover, that respondents' real complaint goes only to

---

[1] This was the explanation given by Senator McClellan at the time he proposed an amendment embodying the new title. 2 *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, 1103. This history, prepared by the National Labor Relations Board, will be cited herein as "*Leg. Hist.*"

the eligibility requirements and not to the self-nomination restriction.

Respondents sought to nominate themselves for office, but were excluded from the ballot because they were not qualified to be officers under the Association's eligibility requirements. It is that action of which they complain. But that action was based solely on their disability to be officers, not on their inability as nominators to place in nomination the names they offered (their own). Respondents did not seek to nominate anyone other than themselves, and they do not complain of the inability of someone else to nominate them. So far as the rules governing the offering of names in nomination go, respondents were in no way restricted from doing what they wanted to do—to wit, to nominate themselves, the very thing the self-nomination rule explicitly permits. The ruling of which they complain is that they were not qualified to be *nominees*, regardless of how or by whom their names were sought to be placed in nomination. It is, in short, only as nominees, not as nominators, that they were held to be disqualified, and it is only of the restrictions on nominees—*i.e.*, the eligibility requirements—that they can complain. The validity of the restrictions on the right to nominate would be raised only if they had sought to nominate, not themselves, but someone else.

2. Despite our belief that it is only the eligibility requirements that are really in issue in this case, we will consider separately the validity under Section 101(a)(1) of (a) the restriction of the right to nomi-

nate to nominating oneself and (b) the restrictions on the right to be an officer.

a. Although we doubt that the court need reach the question, it is our view that the by-law allowing each member to put himself in nomination but not allowing any member to nominate anyone else does not violate Section 101(a)(1). That section does, to be sure, deal with rights to nominate and thus with the subject matter of the by-law. All that it provides, however, is that "Every member * * * shall have *equal* rights * * * to nominate candidates" (emphasis added). It is, by its terms, simply a guarantee of nondiscrimination, of even-handedness, and does not purport to define or guarantee any particular substantive right to nominate. Its purpose is simply to assure that whatever rights to nominate are afforded by the union will be made available equally to all members. Any other interpretation would, as petitioner's brief explains (Pet. Br. 13–24), conflict with the plain words of the statute, the relationship between Titles I and IV, and the legislative history of these provisions.[3]

In this case there was plainly no discrimination against respondents in the rule denying to them the

[3] See, *e.g.*, Senator Kennedy's analysis of Section 101(a)(1) as finally adopted (2 Leg. Hist. 1259): "Section 101(a)(1): Asserts the right of each member of a labor organization to be considered equally and to enjoy identical privileges within the organization to nominate candidates, vote in union elections, attend membership meetings, and participate in the deliberations of the organization. The rights protected by this subsection are circumscribed by the right of the organization to establish for itself reasonable rules in its own constitution and bylaws."

right to nominate for office persons other than themselves, for no other member of the union had any different or greater right.

The substance of the matter, of course, is that nomination in the usual sense is not part of the Association's electoral process. In substance anyone who wishes to stand for election may appear on the ballot, provided that he meets the qualifications for the office. No one requires nomination in the usual sense; and therefore no requirements for nominators are set forth. To speak of discrimination in the right to nominate, in these circumstances, is simply a confusion of terms.

b. As we have said, respondents' real complaint is with the requirements for eligibility to be an officer, which they contend are unreasonably restrictive. However restrictive those requirements may be, they cannot violate Section 101(a)(1) for the simple reason that that provision in no way deals with rights to be an officer or a candidate. It assures equality only in the right "to nominate candidates," and the right to be a nominator and the right to be a nominee are surely different things.

While discrimination as to the right to make nominations may be challenged under Section 101(a)(1), the reasonableness of the qualifications required of officers can in our view be challenged only in a post-election action commenced by the Secretary of Labor under Title IV of the Act. *Robins* v. *Barback*, 325 F. 2d 929 (2d Cir.); *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (3d Cir.), certiorari denied, 371 U.S. 823; and cases cited at page 29 of peti-

tioner's brief. Section 401(e) of the Act, enforceable by the Secretary, declares that "every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed)" and thus deals specifically with the matter of which respondents complain. Indeed, the Secretary has recently filed a complaint under Title IV of the Act challenging an election held by the Pacific Coast District of the Association, alleging that the eligibility and nomination restrictions involved here violate Section 401 of the Act. *Wirtz* v. *Pacific Coast District, National Marine Engineers Beneficial Association,* File No. 42388, N.D. Calif.

To hold that the reasonableness of officer qualifications can be challenged also under Section 101(a)(1) would produce an undesirable overlapping of remedies and would frustrate the purpose of Congress to center in the Secretary control over litigation involving the substantive rules under which union elections are conducted.[4] As the brief *amicus curiae* of the AFL–CIO points out (Br. 14–22), supervision of the litigation by the Secretary will promote uniformity in the regulation of elections, a uniformity which may be lost if every union member may take his dissatisfac-

---

[4] The Secretary will generally have at his command greater resources and legal and investigative staff than are available to the average private litigant. In practice his participation will often mean that the court will have before it a fuller record upon which to decide these difficult issues concerning the reasonableness of union election procedures. Compare *McDonough* v. *Johnston*, 49 Labor Cas., para. 19,042, N.D. Ohio, June 2, 1964, with *Goldberg* v. *Amarillo General Drivers, Local Union No. 577*, 214 F. Supp. 74 (N.D. Tex).

tion with a particular eligibility qualification to the federal courts. Further, our construction reduces the extent of judicial involvement in the internal affairs of the unions and preserves maximum autonomy of these private organizations, since only post-election actions are authorized and then only where the Secretary finds the claims meritorious.

The construction of Section 101(a)(1) by the court of appeals would mean that these sensitive questions could be brought directly before the federal courts in pre-election actions with the result that all elections might be precluded for an extended period of time while litigation was resolved and appealed. Such an intent should not be attributed to a Congress which enacted this statute to require, not delay, elections and which took such pains to limit pre-election remedies.

In sum, Section 101(a)(1) guarantees equal rights to nominate and no more. The fact that the person a particular member wishes to nominate (whether himself or anyone else) is barred from holding office because of restrictive or unreasonable eligibility requirements does not give rise to a cause of action for violation of Section 101(a)(1). The complaint in such a case is with the reasonableness of the eligibility requirements and a remedy is available under Sections 401(e) and 402 of Title IV.

This construction of the statute gives meaningful content to Titles I and IV and eliminates the overlap which results from the construction adopted by the court of appeals. Further, it gives effect to the obvious congressional purpose to limit interference under the Act with the internal rules for union elections

to post-election actions initiated under the guidance and expert judgment of the Secretary of Labor.

We submit that the judgment below should be reversed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

SEPTEMBER 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964